

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

RICCOTIZE DAWSON, <i>Pro Se</i> ,)	Case No.: 1:07 CV 864
)	
Petitioner)	
)	
v.)	JUDGE SOLOMON OLIVER, JR.
)	
BENNY KELLY, Warden,)	
)	
Respondent)	<u>ORDER</u>

On March 23, 2007, Petitioner Riccotize Dawson (“Petitioner” or “Dawson”), *pro se*, filed a Petition for Writ of Habeas Corpus (“Petition,” ECF No. 1), pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court conviction, in which he pled guilty to voluntary manslaughter with a firearm specification and felonious assault without a firearm specification. (Sentencing Journal Entry, Gov’t’s Ex. 3, ECF No. 8-4; Tr. 5-6, Gov’t’s Ex. 4, ECF No. 8-5.) Dawson alleged one ground for relief; namely, that he was denied his right to appeal because the trial court failed to inform him that he had a right to appeal and the state appellate court denied his motion to file a delayed appeal. (Petition at 4.)

This court referred the case to Magistrate Judge Patricia A. Hemann for preparation of a Report and Recommendation. (ECF No. 4.) On August 16, 2007, Respondent Benny Kelly, the Warden of the Lorain Correctional Institution (“Respondent” or “Kelly”) filed its Return of Writ.

(ECF No. 8.) The Magistrate Judge submitted her Report and Recommendation on October 22, 2007, recommending that Dawson's Petition be dismissed. (ECF No.14.) Specifically, the Magistrate Judge found that Petitioner's claim is procedurally defaulted because he failed to present the claim to the Ohio Supreme Court. (*Id.* at 12.)

As of the date of this Order, Petitioner has not filed objections to the Report and Recommendation. By failing to do so, he has waived the right to appeal the Magistrate Judge's recommendation. *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

The court finds, after careful review of the Magistrate Judge's Report and Recommendation and all other relevant documents, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 14.)

Consequently, Dawson's Petition is hereby denied, and final judgment is entered in favor of Respondent. The court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

November 26, 2007